

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE

Case

13-CA-148538

Date Filed

3/19/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer (1) Loftons Holdings Seven, Inc. d/b/a McDonald's and (2) McDonald's USA, LLC, Joint Employers		b. Tel. No. (1) 773-287-4687 (2) 800-244-6227
d. Address (Street, city, state, and ZIP code) (1) 5153 W. Chicago Avenue, Chicago, IL 60651 (2) 2111 McDonald's Drive, Oak Brook, IL 60523		c. Cell No.
e. Employer Representative		f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Restaurant		g. e-Mail
j. Identify principal product or service Fast Food		h. Number of workers employed (1) Approx. 50; (2) 100,000+
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)  
On or around (b) (6), (b) (7)(C) 2014, the joint employers suspended employee (b) (6), (b) (7)(C) in retaliation for (b) (6) participation in protected concerted and Union activities, and in an effort to discourage (b) (6) and other employees from engaging in further protected concerted and Union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)  
Workers Organizing Committee of Chicago

4a. Address (Street and number, city, state, and ZIP code) 850 W. Jackson, Suite 275 Chicago, IL 60607	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No. (312) 243-4731
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. (312) 372-1361
By  (signature of representative or person making charge)	Barry M. Bennett, Lawyer (Print/type name and title or office, if any)	Office, if any, Cell No.
Dowd, Bloch, Bennett & Cervone 8 South Michigan Avenue, 19th Floor, Chicago, IL 60603		Fax No. (312) 372-6599
Address  (date)		e-Mail bbennett@bdd-law.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## Cases

Case Number	Case Name	File	Date Filed	Status	IA Category	Charging Party/Petitioner	Blocked	Hot Topics	Dispute/Unit City	Dispute/Unit State	Charged Party/Employer	No. 8(b)(2) Discriminatees	No. 8(a)(3) Discriminatees	No. of Employees on Petition/Charge	Description	Inquiry Id	Type	Sub Type	Team	Field Agent	Field Supervisor	Barg Status	Closed Reason	Date Closed	New	File O
13-CA-126312	(1) Lofton & Lofton Management V, Inc. d/b/a McDonald's/23 N Western Avenue and (2) McDonald's USA, LLC, joint employers	Case File	4/10/2014	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA, LLC			100,000		(b) (6), (b) (7)(C)	C	CA	JPROKOP	JPROKOP	RPAZ	None	Withdrawal Non-adjusted	6/12/2014		<a href="https://nxdgendocs5.CasId=13-CA-126">https://nxdgendocs5.CasId=13-CA-126</a>
13-CA-142517	Loftons Holdings Seven, Inc. d/b/a McDonald's and McDonald's USA, LLC, Joint Employers	Case File	12/8/2014	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA, LLC		1	50		(b) (6), (b) (7)(C)	C	CA	ECORTEZ	ECORTEZ	RPAZ	None				<a href="https://nxdgendocs5.CasId=13-CA-142">https://nxdgendocs5.CasId=13-CA-142</a>
13-CA-118690	Lofton & Lofton Management V, Inc. A McDonald's Franchise and McDonald's USA, LLC, Joint Employers	Case File	12/10/2013	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA, LLC			100,060		(b) (6), (b) (7)(C)	C	CA	JPROKOP	JPROKOP	RPAZ	None				<a href="https://nxdgendocs5.CasId=13-CA-118">https://nxdgendocs5.CasId=13-CA-118</a>

## Cases

Case Number	Case Name	File	Date Filed	Status	IA Category	Charging Party/Petitioner	Blocked	Hot Topics	Dispute/Unit City	Dispute/Unit State	Charged Party/Employer	No. 8(b)(2) Discriminatees	No. 8(a)(3) Discriminatees	No. of Employees on Petition/Charge	Description	Inquiry Id	Type	Sub Type	Team	Field Agent	Field Supervisor	Barg Status	Closed Reason	Date Closed
13-CA-147394	McDonald's/5500 W. Cermak Rd., Cicero, IL and McDonald's USA, LLC Joint Employers	Case File	3/2/2015	Open	2	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's USA LLC		1	100,060		(b) (6), (b) (7)(C)	CA	CSHERO	CSHERO	JMUTH	None			
13-CA-147150	McDonald's USA/Joint Employers	Case File	2/26/2015	Open	1	Workers Organizing Committee of Chicago	No		Oak Brook	IL	McDonalds USA, LLC			1,000			CA	MHENSEL	MHENSEL	RPAZ	None			
13-CA-145912	Taylor & Malone Management db/a McDonald's/29 E. 87th Street and McDonald's USA, LLC, joint employers	Case File	2/5/2015	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonalds USA, LLC		1	40			CA	ECORTEZ	ECORTEZ	RPAZ	None			
13-CA-145869	6336 S. Ashland McDonald's and McDonald's USA, LLC, joint employers	Case File	2/5/2015	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA LLC		1	32			CA	EGALLIAN	EGALLIAN	PPROKOP	None	Withdrawal Non-adjusted	2/26/201	
13-CA-144963	McDonald's / 5500 W. Cermak Rd., Cicero, IL and McDonalds USA, LLC, Joint Employers	Case File	1/23/2015	Open	3	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonalds		1	60			CA	CSHERO	CSHERO	JMUTH	None			
13-CA-144007	5200 S. Lake Park McDonald's and McDonald's USA, LLC joint employers	Case File	1/7/2015	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA LLC		1	100,035			CA	AHAMPTON	AHAMPTON	JSCHRAND	None			
13-CA-143107	McDonald's/2827 S. Cicero Avenue, Cicero, IL and McDonald's USA LLC, joint employers	Case File	12/17/2014	Open	2	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's		9	62			CA	EGALLIAN	EGALLIAN	PPROKOP	None			
13-CA-142517	Loflons Holdings Seven, Inc. d/b/a McDonald's and McDonald's USA, LLC, Joint Employers	Case File	12/8/2014	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonalds USA, LLC		1	50			CA	ECORTEZ	ECORTEZ	RPAZ	None			
13-CA-137871	Tailormade McD, Inc., a McDonald's Franchisee, and McDonald's USA, LLC., Joint Employers	Case File	9/30/2014	Open	2	Workers Organizing Committee of Chicago	No		Chicago	IL	Tailormade McD, Inc. d/b/a McDonald's and McDonald's USA, LLC., Joint Employers		1	40			CA	HGUTIERR	HGUTIERR	JSCHRAND	None			
13-CA-137707	McDonald's and McDonald's USA, LLC joint employers	Case File	9/29/2014	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA LLC		2	100,050			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	10/21/20	
13-CA-136916	McDonald's / 2827 S Cicero Ave, Cicero, IL and McDonald's USA, LLC, Joint Employers	Case File	9/17/2014	Closed	2	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's			60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	12/2/201	
13-CA-136674	McDonald's / 2827 S. Cicero Ave, Cicero, IL and McDonald's USA, LLC, Joint Employers	Case File	9/12/2014	Closed	3	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's		1	60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	12/2/201	
13-CA-136734	McDonald's / 5624 W. Roosevelt Road and McDonald's USA, LLC, Joint Employers	Case File	9/12/2014	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA LLC			60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	12/2/201	
13-CA-136035	McDonald's 5500 W. Cermak Rd., Cicero, IL and McDonald's USA, Joint Employers	Case File	9/12/2014	Closed	3	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's USA LLC		1	60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	12/2/201	
13-CA-136728	McDonald's / 5624 W. Roosevelt Road, and McDonald's USA, LLC, Joint Employers	Case File	9/12/2014	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	McDonald's USA, LLC		1	60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Adjusted	12/2/201	
13-CA-135942	Heartland Food LLC, an integrated enterprise doing business as Burger King at locations throughout Illinois and at least eight other states	Case File	9/3/2014	Closed	2	Workers Organizing Committee of Chicago	No		Chicago	IL	Heartland Food LLC, an integrated enterprise doing business as Burger King at locations throughout Illinois and at least eight other states			5,000			CA	LFRIEDHE	LFRIEDHE	RPAZ	None	Informal Settlement	3/17/201	
13-CA-135884	McDonald's / 5500 W Cermak Rd. and McDonald's USA, LLC, Joint Employers	Case File	9/3/2014	Closed	2	Workers Organizing Committee of Chicago	No		Cicero	IL	McDonald's			60			CA	CORTEGA	CORTEGA	JHOFSTRA	None	Withdrawal Non-adjusted	12/2/201	



LAW OFFICES  
**DOWD, BLOCH, BENNETT & CERVONE**

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LAUREN B. MCGLOTHLIN  
ELIZABETH L. ROWE

March 19, 2015

**VIA HAND DELIVERY**

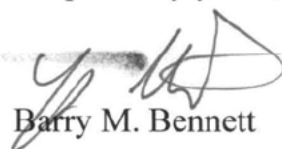
Mr. Peter Sung Ohr  
Regional Director  
Region 13, National Labor Relations Board  
The Rookery Building  
209 South LaSalle Street, Suite 900  
Chicago, IL 60604

**Re: 5153 W. Chicago Avenue McDonald's/McDonald's USA, LLC, named  
as joint employers**

Dear Mr. Ohr:

Enclosed are an original and one copy of a charge against the above-named joint employers. Will you please have a member of your staff stamp the extra copy with the date of filing and return it to our messenger; and will you also please be good enough to arrange for my appearance to be entered on behalf of the charging party. Please note that the substance of this charge was already investigated in Case 13-CA-142517, an amendment to which I provided to Board Agent Cortez yesterday and am submitting simultaneously with this letter and this separate charge. I spoke with Regional Attorney Hitterman and Ms. Cortez about these procedures, and would be happy to discuss them with you if you wish. Thank you for this and past courtesies.

Respectfully yours,

  
Barry M. Bennett

BMB (b) (6), (b) (7)  
Enclosures

cc: (b) (6), (b) (7)(C) WOCC (w/encl.)  
Mr. Steve Rufo, WOCC (w/encl.)



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
209 S La Salle St Ste 900  
Chicago, IL 60604-1443

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341



Download  
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Mobile App

March 20, 2015

Workers Organizing Committee of Chicago  
850 W. Jackson, Suite 275  
Chicago, IL 60607

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Sir or Madam:

The charge that you filed in this case on March 19, 2015 has been docketed as case number 13-CA-148538. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney Elizabeth Cortez whose telephone number is (312)353-4174 and e-mail address is [elizabeth.cortez@nlrb.gov](mailto:elizabeth.cortez@nlrb.gov). If this Board agent is not available, you may contact Deputy Regional Attorney Richard Kelliher-Paz whose telephone number is (312)353-7629.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

- 2 - March 20, 2015

**Procedures:** We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website [www.nlr.gov](http://www.nlr.gov). However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website [www.nlr.gov](http://www.nlr.gov) or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

***Paul Hitterman***

Paul Hitterman  
Acting Regional Director

EC/dg  
Enclosure:  
Copy of Charge

cc: Barry M. Bennett, Esq., Attorney at Law  
Dowd, Bloch, Bennett & Cervone  
8 S. Michigan Ave., Fl 19  
Chicago, IL 60603-3315



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
209 S La Salle St Ste 900  
Chicago, IL 60604-1443

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341



Download  
NLRB  
Mobile App

March 20, 2015

Loftons Holdings Seven, Inc. d/b/a McDonald's  
5153 W. Chicago Ave.  
Chicago, IL 60651-2904

McDonald's USA LLC  
2111 McDonald's Drive  
Oak Brook, IL 60523

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney Elizabeth Cortez whose telephone number is (312)353-4174 and e-mail address is [elizabeth.cortez@nlrb.gov](mailto:elizabeth.cortez@nlrb.gov). If this Board agent is not available, you may contact Deputy Regional Attorney Richard Kelliher-Paz whose telephone number is (312)353-7629.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge by April 2, 2015. If the Board agent later asks for more evidence, I strongly urge you or your representative

to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

**Procedures:** We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.



Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

- 3 -

March 20, 2015

Very truly yours,

***Paul Hitterman***

Paul Hitterman  
Acting Regional Director

EC/dg

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

**CASE NAME****Loftons Holdings Seven, Inc. d/b/a McDonald's and McDonald's USA, LLC, Joint Employers****CASE NUMBER****13-CA-148538****1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC****A. STATE OF INCORPORATION OR FORMATION****B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES****4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED****A. Total:****B. At the address involved in this matter:****9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO****A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.**

\$

**B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.**

\$

**C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount.**

\$

**D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount.**

\$

**E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.**

\$

**F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.**

\$

**G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount.**

\$

**H. Gross Revenues from all sales or performance of services (Check the largest amount)**☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.**I. Did you begin operations within the last 12 months? If yes, specify date:****10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS****NAME****TITLE****E-MAIL ADDRESS****TEL. NUMBER****12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE****NAME AND TITLE (Type or Print)****SIGNATURE****E-MAIL ADDRESS****DATE****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LOFTONS HOLDINGS SEVEN, INC. D/B/A  
MCDONALD'S AND MCDONALD'S USA, LLC,  
JOINT EMPLOYERS**

Charged Party

and

**WORKERS ORGANIZING COMMITTEE OF  
CHICAGO**

Charging Party

**Case 13-CA-148538**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 20, 2015, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Loftons Holdings Seven, Inc. d/b/a  
McDonald's  
5153 W. Chicago Ave.  
Chicago, IL 60651-2904

McDonald's USA LLC  
2111 McDonald's Drive  
Oak Brook, IL 60523

March 20, 2015

\_\_\_\_\_  
Date

Denise Gatsoudis, Designated Agent of  
NLRB

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
209 S La Salle St Ste 900  
Chicago, IL 60604-1443

Agency Website:  
[www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341

May 21, 2015

Barry M. Bennett, ESQ., Attorney at Law  
Dowd, Bloch, Bennett & Cervone  
8 S. Michigan Ave. Ste. 1900  
Chicago, IL 60603-3315

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Mr. Bennett:

We have carefully investigated and considered your charge that Loftons Holdings Seven, Inc. d/b/a McDonald's and McDonald's USA, LLC have violated the National Labor Relations Act.

**Decision to Dismiss:** You have alleged that the employee named in the charge was suspended in violation of Section 8(a)(1) & (3) of the Act. However, the evidence is insufficient to show that the named employee was suspended for [REDACTED] protected, concerted or union activities, or for reasons other than those advanced by the Employer.

**Your Right to Appeal:** You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at [www.nlrb.gov](http://www.nlrb.gov). However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street NW, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

**Appeal Due Date:** The appeal is due on **June 4, 2015**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **June 3, 2015**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be

May 21, 2015

received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before June 4, 2015**. The request may be filed electronically through the *E-File Documents* link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **June 4, 2015, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

*/s/ Peter Sung Ohr*

Peter Sung Ohr  
Regional Director

EC/bz

Enclosure

cc: Loftons Holdings Seven, Inc. d/b/a  
McDonald's  
5153 W Chicago Ave  
Chicago, IL 60651-2904

Doreen S. Davis, Attorney  
Jones Day  
222 East 41st Street  
New York, NY 10017-6702

Michael S. Ferrell, Attorney  
Jones Day  
77 West Wacker Drive,  
Suite 3500  
Chicago, IL 60601

Andrew Madsen, ESQ., Attorney  
Jones Day  
77 West Wacker Drive,  
Suite 3500  
Chicago, IL 60601

McDonald's USA, LLC  
2111 McDonald's Drive  
Oak Brook, IL 60523

Workers Organizing  
Committee of Chicago  
850 W. Jackson, Suite 275  
Chicago, IL 60607



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8820, 1099 - 14th Street, N.W.  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*

Confirmation Number	1000009286
Date Submitted	6/3/2015 6:14:03 PM (GMT-05:00) Eastern Time (US & Canada)
Case Name	Loftons Holdings Seven, Inc. d/b/a McDonald's and McDonald's USA, LLC, Joint Employers
Case Number	13-CA-148538
Filing Party	Charging Party
Name	Bennett, Barry
Email	bbennett@dbb-law.com
Address	8 S. Michigan Ave. 19th Fl. Chicago, IL 60603
Telephone	(312) 372-1361
Fax	(312) 372-6599
Original Due Date	6/4/2015
Date Requested	7/2/2015
Reason for Extension of Time	We are awaiting the conclusion of Region 13's investigation of Case 13-CA-142517. That case involves the same joint employers and the same location, and includes allegations of 8(a)(3) violations against the alleged discriminatee in this case. I believe the outcome of the Region's investigation of that case will be relevant to issues I plan to raise on appeal. I also believe the investigation is likely to be concluded within the time covered by this extension request. Thank you for your consideration.
What Document is Due	Appeal
Parties Served	



**UNITED STATES GOVERNMENT**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, DC 20570

June 5, 2015

BARRY M. BENNETT, ESQ.  
DOWD, BLOCH, BENNETT & CERVONE  
8 S MICHIGAN AVE STE 1900  
CHICAGO, IL 60603-3315

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Mr. Bennett:

We are granting your request for an extension of time to file an appeal to July 2, 2015. You must file your appeal electronically through the Agency's e-filing system or by U.S. mail or by private delivery service. Do not fax or email your appeal. This office will not process faxed or emailed appeals.

To ensure that your appeal is processed, please read and follow carefully the instructions below. We encourage you to file your appeal electronically through the Agency's e-filing system on the website [www.nlrb.gov](http://www.nlrb.gov). If you choose to e-file your appeal, remember to allow enough time to complete the e-filing process by 11:59 pm (E.T.) on July 2, 2015. Otherwise, your appeal will be late.

- 1) Click on E-File documents;
- 2) Enter your NLRB Case Number; and,
- 3) Follow the detailed instructions.

If you file by mail or by delivery service, your appeal will be timely if it is postmarked or given to a delivery service no later than July 1, 2015. If your appeal is postmarked or given to a delivery service on the due date or after, this office will reject it as untimely. The Region must receive a copy by the same date. If hand delivered, an appeal must be received by the General Counsel in Washington, D.C. by 5:00 p.m. E.T. on the appeal due date.

Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

-2

If you do not submit an appeal in accordance with this paragraph, this office will reject it.

Sincerely,

Richard F. Griffin, Jr.  
General Counsel



By:

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Mark E. Arbesfeld, Acting Director  
Office of Appeals

cc: PETER SUNG OHR  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
209 S LA SALLE ST STE 900  
CHICAGO, IL 60604-1443

DOREEN S. DAVIS, ESQ.  
JONES DAY  
222 E 41ST ST  
NEW YORK, NY 10017-6702

LOFTONS HOLDINGS SEVEN, INC.  
D/B/A MCDONALD'S  
5153 W CHICAGO AVE  
CHICAGO, IL 60651-2904

MICHAEL S. FERRELL, ESQ.  
JONES DAY  
77 W WACKER DR STE 3500  
CHICAGO, IL 60601

ANDREW MADSEN, ESQ.  
JONES DAY  
77 W WACKER DR STE 3500  
CHICAGO, IL 60601

cl

**From:** [Ohr, Peter S.](#)  
**To:** [Arbesfeld, Mark](#)  
**Cc:** [Nelson, Daniel N.](#)  
**Subject:** RE: Loftons Holdings Seven Inc., , dba McDonald's, Case 13-CA-148538  
**Date:** Thursday, June 4, 2015 4:26:59 PM

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Mark-

Limited to these set of cases, I have no issue with your granting the extension as requested.

Thanks for asking.

Peter

*Peter Sung Ohr*, Regional Director  
NLRB, Region 13  
209 S LaSalle St, Ste 900  
Chicago, IL 60604  
(312) 353-7574  
<http://www.nlr.gov/region/chicago>

---

**From:** Arbesfeld, Mark  
**Sent:** Thursday, June 04, 2015 3:07 PM  
**To:** Ohr, Peter S.  
**Subject:** Loftons Holdings Seven Inc., , dba McDonald's, Case 13-CA-148538

Hi Peter. The CP has asked for an extended eot in this case. I called him and told him I would get him an eot as the appeal is due tomorrow, but I wanted to consult with you prior to granting such a long extension. I could also give him two weeks and we could reevaluate then. Let me know your position and whether the cases should be reviewed together. Thanks

Mark

Mark E. Arbesfeld  
Deputy Director  
Office of Appeals  
(202) 273-0600

LAW OFFICES  
**DOWD, BLOCH, BENNETT & CERVONE**

8 SOUTH MICHIGAN AVENUE • 19TH FLOOR  
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DAVID P. LICHTMAN  
GEORGE A. LUSCOMBE III  
LAUREN B. MCGLOTHLIN  
ELIZABETH L. ROWE

July 1, 2015

**By NLRB E-File System**

Ms. Deborah M.P. Yaffe  
Director, Office of Appeals  
Office of the General Counsel  
National Labor Relations Board  
1099 – 14<sup>th</sup> Street, N.W., Room 8820  
Washington, DC 20570-001

Re: Case 13-CA-148538  
Lofton's Holdings Seven, Inc. d/b/a McDonald's and  
McDonald's USA, LLC, Joint Employers

Dear Ms. Yaffe:

Charging Party Workers Organizing Committee of Chicago ("Union") respectfully appeals from Region 13's decision to dismiss the above-captioned charge, announced in a letter from Regional Director Ohr dated May 21, 2015.

The charge alleges that Lofton's Holdings Seven, Inc. d/b/a McDonald's, and McDonald's USA, LLC, joint employers (together, "Employer"), suspended Employee (b) (6), (b) (7)(C) in retaliation for (b) (6), (b) (7)(C) protected concerted activity, in particular (b) (6), (b) (7)(C) participation in a strike on (b) (6), (b) (7)(C), 2014. The allegation was originally included in Charge 13-CA-142517, which also alleged coercive threats and statements directed at (b) (6), (b) (7)(C), and discriminatory and retaliatory changes in (b) (6), (b) (7)(C) schedule that were intended to discourage Union activities. The Region found merit to those other allegations, and recently issued a complaint regarding them. The Union refiled the suspension allegation as this separate charge for procedural convenience.



Ms. Deborah M.P. Yaffe

July 1, 2015

Page 2

**FACTUAL SUMMARY**

(b) (6), (b) (7)(C), (b) (7)(D) has been employed at McDonald's since (b) (6), (b) (7)(C), (b) (7)(D), and became involved in the Union in (b) (6), (b) (7)(C), (b) (7)(D). (b) (6), (b) (7)(C) Aff., 1, copy attached. Through (b) (6), (b) (7)(C) Union involvement, (b) (6), (b) (7)(C) learned of a national strike day of action for fast food workers across Chicago and the country, and (b) (6), (b) (7)(C) went on strike on (b) (6), (b) (7)(C), (b) (7)(D) 2014 and (b) (6), (b) (7)(C), (b) (7)(D) 2014. *Id.*, 2. On (b) (6), (b) (7)(C), (b) (7)(D), 2014, (b) (6), (b) (7)(C) was scheduled for a (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) shift. *Id.* At (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (7)(D) delivered a strike notice to (b) (6), (b) (7)(C) (last name unknown), and told (b) (6), (b) (7)(C) the nature of the letter. (b) (6), (b) (7)(C) Aff., 1-2, copy attached. *See also* (b) (6), (b) (7)(C) Aff., 2, where (b) (6), (b) (7)(C) explains (b) (6), (b) (7)(C) waited in (b) (6), (b) (7)(C) car when (b) (6), (b) (7)(C) delivered the notice, and puts the time at "about (b) (6), (b) (7)(C)

The strike notice stated that the employees listed were participating in a lawful, peaceful strike; that they were demanding a wage of \$15.00 an hour and the right to form a Union without retaliation; and that they would return to work unconditionally on (b) (6), (b) (7)(C), (b) (7)(D) (All dates are 2014 unless stated.) The notice listed (b) (6), (b) (7)(C) employees in addition to (b) (6), (b) (7)(C) and beside (b) (6), (b) (7)(C) name was written "(b) (6), (b) (7)(C), (b) (7)(D)". *See* Strike notice letter, copy attached. The letter listed (b) (6), (b) (7)(C) that way because in addition to missing (b) (6), (b) (7)(C), (b) (7)(D) for the strike demonstrations, (b) (6), (b) (7)(C) was missing (b) (6), (b) (7)(C) shift (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C), (b) (7)(D) so (b) (6), (b) (7)(C) could participate in a Union training and preparation session. (b) (6), (b) (7)(C) Aff., 1-2; (b) (6), (b) (7)(C) Aff., 2. (b) (6), (b) (7)(C) participated in the (b) (6), (b) (7)(C), (b) (7)(D) training event and the (b) (6), (b) (7)(C), (b) (7)(D) demonstrations, and therefore missed the (b) (6), (b) (7)(C) as the letter said (b) (6), (b) (7)(C) would. (b) (6), (b) (7)(C) Aff., 2.

In accord with the notice's unconditional offer to return to work, all workers participating in the strike, including (b) (6), (b) (7)(C), were prepared to resume work on (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) was scheduled to work from (b) (6), (b) (7)(C) that day, and was planning to attend work as scheduled. However, at (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) coworker (b) (6), (b) (7)(C), (b) (7)(D) (last name unknown) texted (b) (6), (b) (7)(C) to tell (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) name had been crossed off the schedule. (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C), (b) (7)(D) (last name unknown) and asked why (b) (6), (b) (7)(C) name had been crossed off the schedule. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was a "no call/no show" and (b) (6), (b) (7)(C) "had to fill in for (b) (6), (b) (7)(C), (b) (7)(D) and therefore (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) off the schedule. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) had been participating in a strike and the store had received notice, to which (b) (6), (b) (7)(C), (b) (7)(D) replied that (b) (6), (b) (7)(C) did not know anything about the strike. *Id.*, 2.

The next day, (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C), (b) (7)(D) about the situation. (b) (6), (b) (7)(C), (b) (7)(D) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C), (b) (7)(D) had indeed seen the strike notice and even commented upon reading it that the workers "didn't know what [they] were getting into." *Id.*, 2. (b) (6), (b) (7)(C) followed up with (b) (6), (b) (7)(C), (b) (7)(D) later on (b) (6), (b) (7)(C) and on (b) (6), (b) (7)(C) and they both said (b) (6), (b) (7)(C) was not on the schedule. *Id.*, 2-3. On (b) (6), (b) (7)(C), (b) (7)(D) following conversation between (b) (6), (b) (7)(C), (b) (7)(D) and the Union, (b) (6), (b) (7)(C) was returned to the schedule. *Id.*, 3.

**LEGAL AUTHORITY**

**A. The right to strike is central to the Act and workers have no obligation to provide advance notice except in special circumstances.**

A virtually unlimited number of cases from the Board and the courts have held that for unionized and as-yet organized workers alike, an employer violates section 8(a)(1) by imposing discipline for engaging in a protected strike during a labor dispute. *See, e.g., Atlantic Scaffolding Co.*, 356 NLRB No. 113 at 2 (2010); *McClendon Elec. Servs., Inc.*, 340 NLRB 613, 613 (2003); *Hostar Marine Trans. Sys., Inc.*, 298 NLRB 188 (1990); *Anderson & Anderson d/b/a Anderson Cabinets*, 241 NLRB 513, 529 (1979), *enfd.*, 611 F.2d 1225 (8th Cir. 1979); *Savage Gateway Supermarket, Inc.*, 286 NLRB 180, 182 (1987), *enfd.*, 865 F.2d 1269 (6th Cir. 1989); *New Horizons for the Retarded, Inc.*, 282 NLRB 760, 767 (1987); *Toledo Commutator Co.*, 180 NLRB 973, 978 (1970); *Marshall Car Wheel & Foundry Co.*, 115 NLRB 7, 12 (1956); *NLRB v. Robertson Indus.*, 560 F.2d 396, 398-99 (9th Cir. 1976); *NLRB v. Lasaponara & Sons, Inc.*, 541 F.2d 992, 998 (2d Cir. 1976). When an employer disciplines employees for engaging in a protected strike, the employer's motive is irrelevant to establishing a violation. *Atlantic Scaffolding Co.*, 356 NLRB No. 113 (2011).

It is similarly well-established that, except for exceptional circumstances, there is no obligation for workers or the Union to provide notice of a strike, and that striking without notice is therefore protected activity under the Act. *Montefiore Hospital & Medical Center v. NLRB*, 621 F.2d 510 (2d Cir. 1980) ("the Act protects the right of employees to engage in concerted activities, including the right to strike without prior notice"), citing *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 223 (1963); *McClendon Elec. Servs., Inc.*, 340 NLRB 613, 613 (2003) ("the Act generally does not require employees to give notice before ceasing work in connection with a labor dispute"); *International Protective Services, Inc.*, 339 NLRB 701, 702 (2003) (under "well-established principles, the test of whether [a strike] lost the protection of the NLRA is not whether the Union gave the respondent adequate notice of its strike, because such notice is not required under the NLRA"); *Bethany Medical Center*, 328 NLRB 1094 (1999) ("the Act protects the right of employees to engage in concerted activities, including the right to strike without prior notice").

**B. A purportedly neutral rule that requires workers to provide notice when engaging in strike activity is unlawful.**

A rule that imposes negative consequences on employees for being absent for a strike, with or without notice, is in effect disciplining employees for striking. An employer cannot assert that its imposition of discipline was lawful because it was based on a purportedly neutral rule, rather than in response to employees' protected concerted activity. *See Washington Aluminum*, 370 U.S. 16, 17 (1962) (where workers went on

Ms. Deborah M.P. Yaffe

July 1, 2015

Page 4

strike and employer alleged as basis for termination “an established plant rule which forbade employees to leave their work without permission of the foreman,” workers’ actions were protected and terminations were unlawful); *McClendon Elec. Servs., Inc.*, 340 NLRB 613 (2003)(where worker went on strike and employer alleged that basis for termination was “failure to complete shift,” employer did not have lawful ground for taking adverse action); *Marshall Car Wheel & Foundry Co.*, 115 NLRB 7, 11 n. 8 (1956)(“absenteeism is inherent in any strike. An employer may not successfully defend against the discharge of an employee for engaging in protected activity in the nature of a strike by claiming that the employee violated a company rule which would, if complied with, prevent the employee from engaging in such protected activity”); *Anderson Cabinets*, 241 NLRB 518, 518-519 (1979)(“Calling a strike a voluntary quit or an absence from work justifying discharge is to write Section 13 out of the Act. This is just what the Respondent attempted to do when it fired [the striker] because he had engaged in such union activities. The discharge plainly violated section 8(a)(1) and (3) of the Act.”).

A facially neutral workrule requiring notice of strike activity is as much an impediment to Section 7 rights as a facially neutral work rule requiring permission for strike activity itself. *Savage Gateway Supermarket*, 286 NLRB 180, 183 (1987), *enf’d*, 865 F.2d 1269 (6th Cir. 1989) (unpub.)(“although a notice requirement is a less formidable impediment to protected activity, it is a restrictive condition nonetheless”). Requiring workers to provide individual notice of participation in collective action “would impose a significant burden on the right to strike.” *Special Touch Homecare Servs.*, 2011 NLRB LEXIS 322, 30 (2011), *enf. denied*, 708 F.3d 447 (2d Cir. 2013). Any employer claim that employees are treated uniformly regardless of the reason for the unannounced absence misses the point. Engaging in a strike is a protected activity, and it is therefore unlawful for an employer to punish an employee for such conduct: “While the Act gives no protection to workers who are absent because of illness, athletic events, or family celebrations, it does protect employees who are absent because of a strike.” *Quality Castings Co.*, 139 NLRB 928, 930 (1962), *enf. denied*, 325 F.2d 36 (6th Cir. 1963).

**C. The “business justification” cases holding work stoppages without notice are unprotected only apply to situations involving dangerous conditions or otherwise exceptional facts.**

As explicitly stated in *Special Touch*, and as implied by a litany of cases regarding notice and work stoppages, the few cases where notice requirements have been permissible “do not stand for the general proposition that enforcement of ‘notification’ rules during a strike is always lawful.” *Special Touch Home Care Servs.*, 2011 NLRB LEXIS 322, \*26 (2011)(referring to *Terry Poultry Co.*, 109 NLRB 1097 (1954) and *General Chemical Corp.*, 290 NLRB 76 (1988)). Requiring notification prior to a strike is unlawful, “unless an employer shows that the business justification supporting a notice

## DOWD, BLOCH, BENNETT & CERVONE

Ms. Deborah M.P. Yaffe

July 1, 2015

Page 5

requirement is sufficiently compelling to outweigh unrestricted exercise of protected activity," otherwise "it is not free to discharge an employee for failure to comply with that [notice] rule before engaging in such activity." *Savage Gateway Supermarket, Inc.*, 286 NLRB 180, 183 (1987).

The degree of "business justification" required is high, and the Board and courts have repeatedly made clear that "inconvenience" or routine detriment to business operations -- inherent in a work stoppage -- do not constitute a compelling business interest. In *Savage Gateway*, the employer operated a supermarket and maintained a work rule requiring notice if the employee would be absent. The Board found that disciplining an employee based on the work rule was unlawful:

It is true that it best suits an employer's convenience to know in advance exactly who will and who will not support a strike, but then it is also true that an employer's convenience is best served if employees refrain from suddenly walking off the job in the middle of the day, as they did in *Washington Aluminum*, rather than delaying their walkout so that the employer can make other arrangements to continue production. The Court in *Washington Aluminum*, however, found nothing "indefensible" in the employees' walkout; and nothing in that opinion or subsequent authorities suggests that employers are free to restrict protected concerted activities through application of work rules simply on a showing that enforcement of such rules will help assure efficient operations during a strike.

*Savage Gateway*, 286 NLRB 180, 183-184 (1987)(internal citations omitted). *See also NLRB v. Fed. Sec.*, 154 F.3d 751, 755 (7th Cir. 1998)("Of course more must be shown than the strike activity caused the employer inconvenience, for leverage is the whole purpose of the strike in the first place"); *East Chicago Rehabilitation Center, Inc. v. NLRB*, 710 F.2d 397, 404 (7th Cir. 1983)("But more must be shown than that the activity caused inconvenience. The whole purpose of a strike is to impose costs on the employer, in the hope of making him come to terms"); *Atlantic Scaffolding*, 2011 NLRB LEXIS 107, at \*13 (holding that a work stoppage does not lose the protection of the Act merely because it inflicted economic harm).

Case law following *Washington Aluminum* makes clear that the Board will only find "business justification" in cases where a lack of notice creates dangerous conditions or is otherwise indefensible.

- In *Montefiore Hospital & Medical Center v. NLRB*, 621 F.2d 510, 515-516 (2d Cir. 1980), the Second Circuit stated that "prior notice has been judicially mandated only when a strike, by its timing or unexpectedness, creates great danger or is likely to damage the employer's business excessively." The court held that doctors did not have an obligation to give advance notice when walking out as they had primarily consultation and teaching positions and there was not a

## DOWD, BLOCH, BENNETT & CERVONE

Ms. Deborah M.P. Yaffe

July 1, 2015

Page 6

foreseeable risk of imminent danger, citing *NLRB v. Marshall Car Wheel & Foundry Co.*, 218 F.2d 409, 413 (5th Cir. 1955); *NLRB v. Reynolds & Manley Lumber Co.*, 212 F.2d 155 (5th Cir. 1954).

- In *East Chicago Rehabilitation Center, Inc. v. NLRB*, 710 F.2d 397, 405 (7th Cir. 1983), the Seventh Circuit similarly held that a two-hour “wildcat strike” by nurses’ aides without notice was protected, as there was no *imminent danger*, most strongly illustrated by the fact that the employer at first refused to take the aides back. The Court found that the employer could not require notice, and contrasted the examples of a nurse walking out in the middle of an operation as a situation in which the employer could require notice.
- In *Bethany Medical Center*, 328 NLRB 1094 (1999), a walkout by catheterization workers with fifteen minutes notice was found protected, as there was no foreseeable imminent danger: no emergency procedures were scheduled and delays of patient care in the unit were common.

Cases that *have* allowed discipline for unannounced strikes underscore how narrow the circumstances producing that outcome are, as do subsequent references to such cases. In *General Chemical*, in finding a notice requirement valid, the Board explained that the purpose of the rule was “to ensure safety to the equipment, the plant and the general public.” *General Chemical*, 290 NLRB 76, 83 (1988). *See also Special Touch, supra*, 2011 NLRB LEXIS 322, \*8, where the Board explained that “the holding in *General Chemical* is not based solely on the existence of a plant rule; the Board also found that the walkout resulted in significant danger to the chemical plant”.

One of the few cases in this area after *Washington Aluminum* that does *not* involve dangerous circumstances is *Business Servs. by Manpower v. NLRB*, 784 F.2d 442 (2d Cir. 1986). But *Manpower* nonetheless *does* rest on exceptional facts: the employer there was in the business of providing temporary labor for businesses, and the core nature of the service provided involved making workers available at the precise time when other workers were absent. Thus, the holding of *Manpower* is properly limited to its particular facts.

Treatment of *Terry Poultry Co.*, 109 NLRB 1097, 1102 (1954), in subsequent cases is particularly instructive. In *Quaker Alloy Casting Company*, 135 NLRB 805, 813 (1962), which preceded *Washington Aluminum*, the Board interpreted *Terry* narrowly and referred to its holding disapprovingly, stating that “as the [dissent in *Terry*] pointed out, it has long been recognized that the right to stop work concertedly to present a grievance is not lost simply because permission is not first obtained from the foreman, or the aggrieved employees are otherwise insubordinate, or violate a plant rule.” The Board found that the employees’ work stoppage was not subject to the analysis outlined in *Terry*

Ms. Deborah M.P. Yaffe  
July 1, 2015  
Page 7

and stated that to hold otherwise “would leave little to the employees’ statutory right to engage in a temporary work stoppage for mutual aid and protection.”

Following *Washington Aluminum*, *Terry* has been repeatedly narrowed and cited disapprovingly. In *Johnnie Johnson Tire Co., Inc.*, 271 NLRB 293, 295 (1984), the Board found that *Terry* was inapplicable, but favorably cited the *dissent* from that case, noting that the “right to stop work concertedly to present a grievance to management is not lost simply because permission is not first obtained from the foreman.” The Board in *Johnnie Johnson Tire* went on to clarify that a work stoppage will necessarily affect production and explained this does not preclude protection of the Act “so long as employees involved take reasonable precautions to avoid imminent danger to the employer’s physical plant which foreseeably would result.” See also *Go-Lightly Footwear Inc.*, 251 NLRB 42 (1980).

Similarly in *Phillip Industries*, 172 NLRB 2119, 2128 (1968), the Board interpreted *Terry* narrowly, dismissing that case as inapplicable to the facts at hand, and noting that “in any event [*Washington Aluminum*] is controlling” and the rule in *Terry* could not lawfully have been applied to the facts of the case. The Board went on to state that “a unilateral plant rule which is interpreted to prohibit employees from “leaving Shop Without Notices and Stopping line” when such employees are concertedly presenting grievances in respect to their working conditions to their employer offends Section 7 of the Act and is in violation of Section 8(a)(1) of the Act.” 172 NLRB at 2131. See also *NLRB v. Special Touch Home Care Servs.*, 566 F.3d 292, 297 (2d Cir. 2009), citing *Montefiore Hospital & Medical Center v. NLRB*, 621 F.2d 510 (2d Cir. 1980), and stating that *Terry* “cannot be immediately reconciled with cases which have held that individual employees – including in the medical context – need not give notice before going on strike.”

**APPLICATION OF THE FACT TO THE LAW REQUIRES THAT THE APPEAL BE SUSTAINED AND A COMPLAINT BE ISSUED.**

The Union does not know what evidence the Employer presented in response to this charge, nor does the Union know the basis for the Regional Director’s decision. But we submit the decision to dismiss could not have been proper in light of the applicable legal standards and the facts the Union presented in support of the charge. Those facts, as discussed above, show that (b) (6), (b) (7)(C), (b) (7)(D) missed (b) (6), (b) (7)(C) of work from (b) (6), (b) (7)(C) job at McDonald’s in connection with a strike, the Union gave (b) (6), (b) (7)(C) Employer written notice of the strike about 20 minutes into the start of the (b) (6), (b) (7)(C) shift (b) (6), (b) (7)(C) missed and specifically informed (b) (6), (b) (7)(C) Employer that (b) (6), (b) (7)(C) would be missing work on the (b) (6), (b) (7)(C) because of the strike, and (b) (6), (b) (7)(C) participated in Union and strike-related activities on the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) missed work. The Employer then removed (b) (6), (b) (7)(C) from the schedule starting on the day (b) (6), (b) (7)(C) had unconditionally offered to return to work, (b) (6), (b) (7)(C), (b) (7)(D) told (b) (6), (b) (7)(C) the reason was that (b) (6), (b) (7)(C) had been a “no call/no show” and turned aside (b) (6), (b) (7)(C)’s reference to strike



Ms. Deborah M.P. Yaffe  
 July 1, 2015  
 Page 8

participation by saying (b) (6), (b) (7)(C) knew nothing about a strike, and (b) (6), (b) (7)(C) then directly contradicted that claim of ignorance by (b) (6), (b) (7)(C) who had taken the action against (b) (6), (b) (7)(C). Furthermore, as found by the Regional Director through investigation of another charge, the Employer singled (b) (6), (b) (7)(C) out for a separate form of retaliation because of (b) (6), (b) (7)(C) Union activities.

The Union does not know whether the Employer advanced the claim that (b) (6), (b) (7)(C) did not know about the strike. But if it did, and even if it presented (b) (6), (b) (7)(C) for an affidavit and (b) (6), (b) (7)(C) denied knowledge of the strike, (b) (6), (b) (7)(C) statement contradicts that denial. And (b) (6), (b) (7)(C) status as (b) (6), (b) (7)(C) removes any hearsay issue, and means the statement by (b) (6), (b) (7)(C) about what (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) constitutes admissible evidence that notwithstanding (b) (6), (b) (7)(C) claims, (b) (6), (b) (7)(C) absolutely *did* know about the strike. Even if both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) provided affidavits, the situation would still be one of conflicting evidence; and such a conflict should not be resolved at the investigatory level, but instead should be resolved by an ALJ after hearing the testimony, observing the witnesses, and making the necessary credibility determinations. Of course if the Employer failed to present (b) (6), (b) (7)(C) to deny knowledge of the strike, then it is effectively undisputed that (b) (6), (b) (7)(C) (1) lied to (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) explained the purported justification for the suspension and (2) suspended (b) (6), (b) (7)(C) for participating in the strike.

Or perhaps the issue is the *amount* of notice. According to the affidavits of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) delivered the strike notice to the store 20 or 25 minutes after (b) (6), (b) (7)(C) scheduled start time on (b) (6), (b) (7)(C). If the Employer claims the suspension was lawful because the notice came after (b) (6), (b) (7)(C) shift started, that would be inadequate, or at least it would be inadequate without a lot more. And the Union is confident that the requisite "lot more" is not there.

As discussed in the cases cited earlier in this appeal, advance notice of a strike is not required at all, except in the most extreme circumstances. The Union doubts most seriously that such extreme circumstances were not shown to exist:

- Did the Employer show that the store closed or that thousands of dollars of merchandise was ruined and had to be discarded because (b) (6), (b) (7)(C) was unexpectedly absent from (b) (6), (b) (7)(C) shift on (b) (6), (b) (7)(C)?
- Did the Employer show that the health and safety of its customers was put at risk because they may have had to wait longer for their Big Macs or milkshakes?
- Did the Employer show *any* harm from (b) (6), (b) (7)(C) absence other than the inconvenience and the possible imposition of extra costs that are part of

Ms. Deborah M.P. Yaffe  
July 1, 2015  
Page 9

the toll a strike is expected to impose in order to persuade the employer to satisfy its workers' demands?

And for that matter, if (b) (6), (b) (7)(C) absence from work really *were* so devastating, how did the Employer possibly manage without (b) (6), (b) (7)(C) beginning on (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) was ready to work but (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) off the schedule? And how could the (b) (6), (b) (7)(C) possibly have decided to take (b) (6), (b) (7)(C) off the schedule if (b) (6), (b) (7)(C) presence were so crucial? See, e.g. *East Chicago, supra*, where the employer's claim that the strike created dangerous or otherwise indefensible circumstances was found to have been belied by its refusal to reinstate the nurses' aides after their two-hour wildcat strike, 710 F.2d 397; and *Time-O-Matic, Inc. v. NLRB*, 264 F.2d 96, 101 (7th Cir. 1959), where workers walked off the job to meet with the boss and the employer knew they were doing so but made no attempt to have them return to work or arrange to meet at a different time, suggesting the employer did not have a genuine concern with maintenance of production and discipline.

Or perhaps the Employer, and the Regional Director, relied on the fact that (b) (6), (b) (7)(C) was off (b) (6), (b) (7)(C) for strike participation and other employees were (b) (6), (b) (7)(C) off (b) (6), (b) (7)(C). But that should not matter. (b) (6), (b) (7)(C) states in (b) (6), (b) (7)(C) affidavit that the reason (b) (6), (b) (7)(C) was off (b) (6), (b) (7)(C) was that (b) (6), (b) (7)(C) was scheduled for the (b) (6), (b) (7)(C) shift and the Union was conducting strike training and preparation that (b) (6), (b) (7)(C) so everybody would be ready for the next day. (b) (6), (b) (7)(C) affidavit explains the same thing, and the notice letter the Union provided stated that (b) (6), (b) (7)(C) would be off (b) (6), (b) (7)(C), (b) (7)(D) because of the strike. The (b) (6), (b) (7)(C), (b) (7)(D) activities were no less concerted, and should be no less protected, than the demonstrations on (b) (6), (b) (7)(C), (b) (7)(D) and the fact that (b) (6), (b) (7)(C) was scheduled to work during the hours on (b) (6), (b) (7)(C), (b) (7)(D) that would conflict with participation in such activity should not change the protected nature of that participation.

Finally, in trying to imagine what argument the Employer might have made, it seems the Employer could have pointed to the other Union members listed on the notice letter who participated in the strike but were not disciplined, and suggested that the absence of retaliatory discipline toward the rest of them should somehow immunize it from the consequences of its misconduct toward (b) (6), (b) (7)(C). As noted earlier in this letter, proof of improper motivation is not necessary when an employer disciplines an employee for participating in a strike. *Atlantic Scaffolding, supra*. Furthermore, accepting a claim of the sort the Union has imagined the Employer here *might* have made would let an employer discipline only a single employee as a way of scaring other workers while giving itself the ability to argue that its actions could not *possibly* have been retaliatory because not all employees who engaged in the concerted activities were subjected to retaliation; and the Board should not fall for such a ploy.

To the extent the Employer might claim nonetheless that the absence of discipline against the others indicates there must have been some other, legitimate reason for suspending (b) (6), (b) (7)(C) by taking (b) (6), (b) (7)(C) off the schedule on and after (b) (6), (b) (7)(C) there are at

# DOWD, BLOCH, BENNETT & CERVONE

Ms. Deborah M.P. Yaffe

July 1, 2015

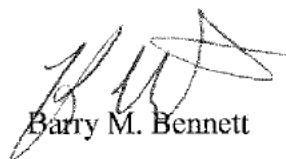
Page 10

least two grounds to show the Employer *was* acting from improper motivation. First, as found by Region 13 in issuing in the complaint in Case 13-CA-142517, the Employer has already singled (b) (6), (b) (7)(C) out for retaliatory and discriminatory treatment with respect to (b) (6), (b) (7)(C) scheduling as a result of participation in protected concerted and Union activities. Second, the admission by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) lied when (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) did not know anything about the strike demonstrates the guilty conscience of somebody who is knowingly doing wrong. Motivation should not matter; but if it did, there are ample grounds to demonstrate the Employer was motivated by special hostility toward (b) (6), (b) (7)(C) as a result of (b) (6), (b) (7)(C) role in protected activities.

(b) (6), (b) (7)(C) participated in the strike and strike-related activities on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and the Employer treated that participation as a disciplinary event that it punished by depriving (b) (6), (b) (7)(C) of work and pay. That is illegal, just as the Employer's conduct in changing (b) (6), (b) (7)(C) schedule in retaliation for (b) (6), (b) (7)(C) participation in protected activities is illegal. And the General Counsel should challenge and seek appropriate remedies for *both* forms of illegal conduct.

For the reasons stated here, and based on such other considerations as the General Counsel may find applicable, the Union respectfully asks that the decision of Region 13 to dismiss the charge be reversed, that the charge be remanded, and that a complaint be issued in the absence of settlement.

Respectfully submitted,



Barry M. Bennett

BMB (b) (6), (b) (7)(C)

## Attachments

(b) (6), (b) (7)(C), (b) (7)(D) Affidavit

(b) (6), (b) (7)(C), (b) (7)(D) Affidavit

Strike Notice Letter



## 21

[illegible]

1985-1986

1112 W. Knappton Avenue  
1163 W. Knappton Avenue  
Chicago, Ill. 60643

U.S. DEPARTMENT OF AGRICULTURE

On December 1, 1954, a photograph of 2153 W. Chicago Avenue, Chicago, Illinois, showing the building and the street, was taken. The photograph was taken from the street and shows the building and the street.

[illegible]

They purchased and used equipment for the 1980s. All existing work was completed for the 1980s were discontinued after December 31 for the next calendar year. The company's future prospects for work and the number of employees is highly variable and subject to change. The company's future prospects for work and the number of employees is highly variable and subject to change. The company's future prospects for work and the number of employees is highly variable and subject to change.

Your business is probably becoming more and more complicated every day. Do you continue to pay the money out of your pocket? These types of business expenses can add, add, and add. These expenses are perfect to deduct from your business. But of course, to be deducted they have to be business expenses. They have to be ordinary and necessary. They have to be incurred for the purpose of your daily work for each dollar that you spend in the company, and they have to be in the way.

[illegible]

**Partnership Program**

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (7)(C)

Page 12 of 12

Agent: [AGENT NAME AND TITLE]

## CASEHANDLING LOG

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UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

July 2, 2015

BARRY M. BENNETT, ESQ.  
DOWD, BLOCH, BENNETT & CERVONE  
8 S MICHIGAN AVE STE 1900  
CHICAGO, IL 60603-3315

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Mr. Bennett:

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.  
General Counsel

By:

A handwritten signature in dark ink, reading "Deborah M.P. Yaffe". The signature is fluid and cursive, with the last name "Yaffe" being particularly prominent.

---

Deborah M.P. Yaffe, Director  
Office of Appeals

cc: PETER SUNG OHR  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
209 S LA SALLE ST STE 900  
CHICAGO, IL 60604-1443

ANDREW MADSEN, ESQ.  
JONES DAY  
77 W WACKER DR  
STE 3500  
CHICAGO, IL 60601



Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

-2

LOFTONS HOLDINGS SEVEN, INC.  
D/B/A MCDONALD'S  
5153 W CHICAGO AVE  
CHICAGO, IL 60651-2904

WORKERS ORGANIZING  
COMMITTEE OF CHICAGO  
850 W JACKSON STE 275  
CHICAGO, IL 60607

DOREEN S. DAVIS, ESQ.  
JONES DAY  
222 E 41ST ST  
NEW YORK, NY 10017-6702

MICHAEL S. FERRELL, ESQ.  
JONES DAY  
77 W WACKER DR STE 3500  
CHICAGO, IL 60601

MCDONALD'S USA, LLC  
2111 MCDONALD'S DR  
OAK BROOK, IL 60523

cl



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

August 26, 2015

BARRY M. BENNETT, ESQ.  
DOWD, BLOCH, BENNETT & CERVONE  
8 S MICHIGAN AVE STE 1900  
CHICAGO, IL 60603-3315

Re: Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

Dear Mr. Bennett:

This office has carefully considered the appeal from the Regional Director's refusal to issue complaint. We agree with the Regional Director's decision and deny the appeal. The evidence was insufficient to establish that the Employer had knowledge of the discriminatee's whereabouts when (b) (6), (b) (7)(C) was a no call, no show on (b) (6), (b) (7)(C) 2014. On this basis, the Employer removed (b) (6), (b) (7)(C) from the schedule on (b) (6), (b) (7)(C) 2014. In this regard, the facts of this appeal are distinct from those in the cases you cite in the appeal. Further, even if the Employer's (b) (6), (b) (7)(C) who received the notice were a supervisor or agent of the Employer, the notice contained an arguable ambiguity concerning the dates of the strike. Based thereon, no violation of the Act could be established and further proceedings as to this allegation are unwarranted.

Sincerely,

Richard F. Griffin, Jr.  
General Counsel

A handwritten signature in dark ink that reads "Mark E. Arbesfeld". The signature is written in a cursive, slightly slanted style.

By: \_\_\_\_\_  
Mark E. Arbesfeld, Acting Director  
Office of Appeals

Loftons Holdings Seven, Inc. d/b/a  
McDonald's and McDonald's USA, LLC,  
Joint Employers  
Case 13-CA-148538

-2

cc: PETER SUNG OHR  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
209 S LA SALLE ST STE 900  
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CHICAGO, IL 60651-2904

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kf